

## **RECONCILIATION, SETTLEMENT AND MUTUAL RELEASE AGREEMENT**

This Reconciliation, Settlement, and Mutual Release Agreement ("**Release**") is made and entered into this 25<sup>th</sup> day of February, 2015 (the "**Effective Date**"), by and between Technology Education Solutions, LLC ("**TES**"), on the one hand, and the CHATHAM COUNTY BOARD OF EDUCATION (the "**Board**") on the other hand. The aforementioned parties to this Release shall hereinafter be referred to collectively as the "**Parties**" and each as a "**Party**."

### **DEFINITIONS**

**TES**: For purposes of this Release, the term "**TES**" shall mean Technology Education Solutions, LLC and any of its respective past, present, or future parent or subsidiary corporations, affiliates, divisions, predecessors, successors, administrators, assigns, insurers, underwriters, agents, officers, board members, trustees, receivers, custodians, directors, partners, shareholders, employees, attorneys, and all parties in privity therewith.

**Board**: For purposes of this Release, the term "**Board**" shall mean the Chatham County Board of Education and any of its respective past, present, or future boards, predecessors, successors, administrators, assigns, insurers, board members, directors, employees, attorneys, and all parties in privity therewith.

### **RECITALS**

WHEREAS, TES is in the business of providing, among other things, educational technology and learning management systems to school districts, and is an authorized reseller of the BrainHoney Learning Management System, a product of Agilix Labs, Inc.;

WHEREAS, TES has provided the Board with certain technology, training, and consulting services in connection with the Board's limited license to the BrainHoney Learning Management System (collectively, the "**Services**");

WHEREAS, TES and the Board entered into that certain Contract for Professional

Technology Services, effective March 6, 2014, for a limited license to the BrainHoney Learning Management System computer program software and related training and consulting services; and that certain Contract for Professional Technology Services, effective May 22, 2014, for a limited license to 1,740 Common Core item questions and related text passages to be delivered through the BrainHoney Learning Management System (collectively, as the same may have been supplemented, amended and/or modified to date, the "Contracts");

WHEREAS, the Board and TES dispute the quality and nature of the Services provided, the validity of the Contracts, and the amounts properly due and owing to TES in connection with the Contracts and the Services; and

WHEREAS, without admitting any liability and in the interest of avoiding protracted and expensive litigation, the Parties have mutually agreed upon a cessation of the Services, termination of the Contracts, and a full and complete reconciliation and resolution of any and all disputes between them, each pursuant to the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the promises, agreements, and releases contained herein, the legal sufficiency of which is hereby acknowledged by the Parties, and intending to be legally bound, the Parties now agree as follows:

1. Representations of the Parties.

(a) The Parties warrant and represent that they have been fully informed and have full knowledge of the terms, conditions, and effects of this Release.

(b) The Parties warrant and represent that they have, either personally or through their attorneys, fully investigated, to their full satisfaction, all facts surrounding the various claims, controversies, and disputes between them, and are fully satisfied with the terms and effects of this Release.

(c) The Parties warrant and represent that no promise, representation, or inducement has been offered or made except as herein set forth and that this Release is executed without reliance upon any statement or representation by any of the Parties or their employees, partners, officers, affiliates, agents, or attorneys.

2. Compromise/No Admissions. This Release is expressly agreed to be in compromise of disputed claims between the Parties and is intended to avoid the time, cost, and uncertainty of litigation. This Release shall not be construed as an admission by any of the Parties of any liability or wrongdoing of any nature whatsoever.

3. Payment by Board; Cessation of Services; Withdrawal of Public Records Request.

(a) In full and final payment of any and all amounts that either of the Parties may claim due pursuant to, arising out of, and/or relating in any way to the Contracts and/or the Services, and in consideration of the mutual releases and other terms set forth herein, the Board shall pay to TES the sum of Twenty Thousand Dollars and Zero Cents (\$20,000.00) (the "Settlement Sum"). A one-time payment of the total Settlement Sum shall be made to TES within five (5) business days following full execution of this Release. Payment of the Settlement Sum shall be made by the Board as set forth above, payable to Technology Education Solutions, LLC via check, and shall be delivered to 1115 Birch Hill Drive, Kernersville, NC 27284, attn: President and Manager, Dawn Morgan. Upon payment of the Settlement Sum to TES, the Parties agree that all amounts due and payable to TES shall have been fully paid.

(b) In consideration of the terms of this Release, TES acknowledges and agrees that the Settlement Sum resolves the Board's outstanding financial obligation to TES through and including the Effective Date. TES shall have no further obligations whatsoever under the Contracts and/or in connection with the provision of the Services to the Board.

(c) In consideration of the terms of this Release, TES acknowledges and agrees that the public records requests dated September 26, 2014 and October 15, 2014 have been withdrawn, and the Board has no further obligation to respond to the requests.

4. Event of Default. In the event that the payment required by Section 3(a) of this Release is not received by TES when due, TES shall provide written notice of that payment default to the Board (via email and/or overnight delivery services), directed to the attention of Dr. Derrick Jordan, Superintendent. The Board shall have five (5) business days from the date such notice is sent to cure the Event of Default.

5. Costs. The Parties agree that each shall bear its own attorneys' fees and costs in connection with this dispute.

6. Release.

In consideration of the promises and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, and upon receipt of the Settlement Sum, TES hereby irrevocably and unconditionally releases, acquits, exonerates and forever discharges and covenants not to sue the Board for and from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, dues, sums of money, deposits, advances, pre-payments, accounts, reckonings, reconciliations, accountings, audits, bonds, bills, specialties, covenants, expenses and/or attorneys' fees, of every conceivable kind, character and nature whatsoever, in law, equity or otherwise, whether accrued or unaccrued, known or unknown, suspected or unsuspected, arising out of and/or relating in any way to the Contract and/or the provision and/or cessation of Services, including, but not limited to, claims for principal, interest, penalties and/or attorneys' fees owed to TES in connection with the Contracts and/or the Services, which TES

now has, owns or holds or claims to have owned or held, or which TES has at any time heretofore owned or held or claimed to have owned or held; but saving and excepting the rights, duties and obligations of the Parties under this Release. Without limitation of the foregoing, TES further expressly waives its rights under the Contracts (if any) to prohibit the Board from discussing employment opportunities and/or offering employment to any of TES's hourly or supervisory personnel, which performed services under the Contract during the term thereof.

In consideration of the promises and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Board hereby irrevocably and unconditionally releases, acquits, exonerates and forever discharges and covenants not to sue TES for and from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, dues, sums of money, deposits, advances, pre-payments, accounts, reckonings, reconciliations, accountings, audits, bonds, bills, specialties, covenants, expenses and/or attorneys' fees, of every conceivable kind, character and nature whatsoever, in law, equity or otherwise, whether accrued or unaccrued, known or unknown, suspected or unsuspected, arising out of and/or relating in any way to the Contracts and/or the provision and/or cessation of Services, including, but not limited to, claims for principal, interest, penalties and/or attorneys' fees owed to the Board in connection with the Contracts and/or the Services, which the Board now has, owns or holds or claims to have owned or held, or which the Board has at any time heretofore owned or held or claimed to have owned or held; but saving and excepting the rights, duties and obligations of the Parties under this Release and as noted below. Notwithstanding the above, the Parties specifically agree that TES shall not be released from any liability for any third party claims, including, but not limited to, any claims from Agilix Labs, Inc., arising in any

way out of the Services, the Contracts, or the terms of this Release, and agrees to indemnify the Board against any such claims.

7. Binding Effect. This Release shall inure to the benefit of and be binding upon the Parties and upon their respective heirs, beneficiaries, administrators, representatives, executors, successors, and assigns.

8. Governing Law. This Release shall be governed by and interpreted in accordance with the substantive laws of the State of North Carolina, without regard to its choice of law or conflict principles, in relation to all matters of formation, interpretation, construction, validity, performance and enforcement.

9. Severability. In the event any provision of this Release shall be judged, declared, held or ruled to be invalid, illegal, or unenforceable, in whole or in part, such provision shall be deemed severable, and it shall not invalidate or impair the Release as a whole or any other provision of the Release.

10. Entire Agreement. This Release constitutes the entire agreement between the Parties pertaining to the subject matter contained therein. This Release supersedes all other prior agreements and understandings, both written and oral, among the Parties with respect to the subject matter hereof.

11. Amendment. This Release shall not be modified or amended except by an instrument in writing signed by all of the Parties.

12. Counterparts. This Release may be executed in any number of counterparts and by different Parties hereto in separated counterparts with the same effect as if the Parties had signed the same document. All such counterparts shall be deemed an original, shall be construed together and shall constitute one and the same instrument. This Release, to the extent signed and

delivered by means of a facsimile or other electronic means (e.g. emailed PDF), shall be treated in all manner and respects as an original agreement and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person.

13. Headings. The Headings contained in this Release are for convenience only. They form no part of this Release and shall not affect its interpretation.

14. Authority. Each Party represents, acknowledges, and warrants that the person who signs this Release on their or its behalf has been duly authorized to execute this Release. Each Party further acknowledges and agrees that the execution, delivery, and performance of this Release will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, any other document, agreement or other instrument to which such Party is a party, nor, to the best of such Party's knowledge, will such action result in any violation of the provisions of any statute or any order, rule or regulation of any governmental authority having jurisdiction over such Party. Each Party has all requisite power and authority to execute and deliver, and to perform its obligations under this Release.

15. Confidentiality and Non-Disparagement.

(a) Except as required by law, the Parties agree that they will not disclose the existence and terms of this Release, as well as the underlying circumstances leading to this Release. Except as required by law, the Parties will only disclose information regarding this Release, and then only to the extent reasonably necessary, to their attorneys, financial advisors and tax advisors. The Parties may also disclose information regarding this Release to other third parties to the extent that such disclosure is required by law (including the requirements of any public records act or similar legal requirements).

(b) The Parties acknowledge and agree that the claims released herein have

been amicably resolved to their mutual satisfaction. The Parties represent and agree that they will not criticize, denigrate or otherwise disparage one another.

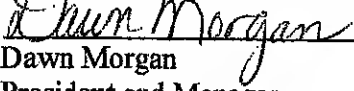
16. Waiver; Cumulative Rights. Any Party's delay or failure to enforce any provision or provisions of this Release shall not be in any way construed as a waiver of any such provision or provisions, nor prevent that Party thereafter from enforcing that provision or provisions and each and every other provision of this Release. The rights granted to the Parties pursuant to this Release are cumulative and a Party's exercise of one right shall not constitute a waiver of such Party's other rights available to it hereunder subject to the express terms and conditions set forth herein.

**[SIGNATURES APPEAR ON THE FOLLOWING PAGE]**



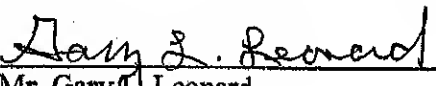
IN WITNESS WHEREOF, the Parties hereto intending to be legally bound hereby set their names and have hereby executed this Reconciliation, Settlement, and Mutual Release Agreement on the date indicated below.

**TECHNOLOGY EDUCATION SOLUTIONS, LLC**

By:   
Name: Dawn Morgan  
Title: President and Manager

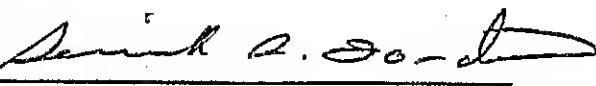
Date: 2-25-15

**CHATHAM COUNTY BOARD OF EDUCATION**

By:   
Name: Mr. Gary L. Leonard  
Title: Chair

Date: 3-4-15


Attest:

By:   
Name: Dr. Derrick Jordan  
Title: Superintendent

Date: 3-4-15

This instrument has been preaudited in the manner required by the School Budget and Fiscal Control Act.

3/5/15  
(Date)

  
(Signature of finance officer)